

Amendment
Review

Majority OTP-AM (9) - LL, JS, EH, JC,
(Minority OTP-AM (3), CH, BH, JM, SS, KA
Minority ONTP (1))

LD 719

Committee: VLA

LA: DCT

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LR (item)#: 2197(02)

New Title?: YES

Add Emergency?: NO

Date: 6/17/2019

LD 719

Majority report (Minority OTP-AM)

Amend the bill by striking the title and inserting the following title in its place:

“An Act Regarding Adult Use Marijuana”

Amend the bill by striking everything after the title and before the summary and inserting the following:

Sec. 1. 22 MRSA §2158 is amended to read:

§2158. Addition of certain substances limited

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B; but when such substance is so required or cannot be avoided, the Commissioner of Agriculture, Conservation and Forestry shall adopt rules limiting the quantity therein or thereon to such extent as the commissioner finds necessary for the protection of public health, and any quantity exceeding the limits so fixed must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B. While such a rule is in effect limiting the quantity of any such substance in the case of any food, such food may not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of section 2156, subsection 1, paragraph A. In determining the quantity of such added substance to be tolerated in or on different articles of food, the commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be relevant by the same or other poisonous or deleterious substances. Goods that are prepared by a caregiver under section 2152, subsection 4-A, paragraph G or in a food establishment that is a licensed facility under section 2167 and that contain marijuana for medical use by a qualifying patient, pursuant to chapter 558-C, are not considered to be adulterated under this subchapter. Goods that are prepared in a food establishment that is a licensed facility under section 2167 and that is a licensed products manufacturing facility under Title 28-B and that contain marijuana for adult use pursuant to Title 28-B are not considered to be adulterated under this subchapter.

Sec. 2. 28-B MRSA §205, sub-§4, first ¶ is amended to read:

4. Issuance of active license upon certification of local authorization and payment of applicable license fee. The Except as otherwise provided in this subsection, the department shall issue an active license to an applicant that has been issued a conditional license pursuant to subsection 3 and that meets all applicable requirements of this subsection. Prior to issuance of an active license pursuant to this subsection, the department shall require an applicant that has been issued a conditional license to submit information necessary for the department to determine that the applicant continues to meet all applicable requirements for conditional licensure under this subchapter. The department may refuse to issue an active license to an applicant if the department determines that the applicant no longer meets all applicable requirements for conditional licensure under this subchapter.

Sec. 3. 28-B MRSA §503, sub-§10 is amended to read:

10. Rules. The department shall adopt rules regarding the provisional licensure, licensure, certification and accreditation of testing facilities and the testing of marijuana and marijuana products by testing facilities pursuant to this chapter, including, but not limited to, rules establishing acceptable testing and research practices for testing facilities, including, but not limited to, provisions relating to testing practices, methods and standards; remediation and retesting procedures; quality control analysis; equipment certification and calibration; chemical identification; testing facility record-keeping, documentation and business practices; disposal of used, unused and waste marijuana and marijuana products; and reporting of test results. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 28-B MRSA §510 is amended to read:

§510. Limited access areas

A Except as provided in subsection 1, a person may not enter or remain in any limited access area unless the person displays an individual identification card issued by the department pursuant to section 106.

1. Contractors. A licensee may allow a person to enter or remain in any limited access area without displaying an individual identification card if the person is a contractor of the licensee, including, but not limited to, an electrician, a plumber, an engineer or an alarm technician, whose scope of work will not involve the handling of marijuana or marijuana products; the person signs a visitor entry log provided and maintained by the licensee and is issued a visitor identification badge by the licensee; and, if the person is working in a limited access area with immediate access to marijuana or marijuana products, the person is supervised at all times by the licensee or an employee of the licensee.

2. Licensee compliance. A licensee shall ensure that all areas of ingress and egress to limited access areas within its licensed premises are conspicuously marked and that a person is not allowed to enter or remain in any limited access area without displaying the person's

individual identification card issued by the department pursuant to section 106.

Sec. 5. 28-B MRSA §703, sub-§1, ¶D is amended to read:

D. Must have a universal symbol stamped or embossed on each serving of the product, except that the department may determine by rule that, for a particular type of product, such stamping or embossing is impracticable and is not required;

Sec. 6. 28-B MRSA §803-A is enacted to read:

§803-A. Administrative holds

In accordance with the provisions of this section, the department may impose an administrative hold on a licensee if, as a result of an inspection or investigation of the licensee by the department or a criminal justice agency, the department determines there are reasonable grounds to believe the licensee or an agent or employee of the licensee has committed or is committing a violation of the provisions of this chapter, the rules adopted pursuant to this chapter or the terms, conditions or provisions of the licensee's license.

1. Notice. The department shall provide to a licensee subject to an administrative hold notice of the imposition of that hold, which must:

A. Include a concise statement of the basis for the hold;

B. Detail the marijuana, marijuana products or marijuana plants subject to the hold;

C. Describe any operational restrictions to be placed on the licensee's licensee during the duration of the hold; and

D. Indicate actions that must be taken by the licensee as a result of the hold.

An administrative hold takes effect at the time that the notice under this subsection is provided by the department to the licensee.

2. Licensee actions. A licensee subject to an administrative hold must physically segregate in a limited access area any marijuana, marijuana products or marijuana plants subject to the hold, as detailed in the notice under subsection 1, from any other marijuana, marijuana products or marijuana plants not subject to the hold. For the duration of the hold, the licensee may not sell, give away, transfer, transport, dispose of or destroy any marijuana, marijuana products or marijuana plants subject to the hold, but may, as applicable, cultivate, harvest or otherwise maintain the marijuana, marijuana products or marijuana plants subject to the hold unless specifically restricted by the department from engaging in such activities pursuant to subsection 1, paragraph C.

3. Operational responsibilities and restrictions. A licensee subject to an administrative hold shall, for the duration of the hold, maintain its licensed premises and otherwise continue to operate its licensed marijuana establishment in accordance with the provisions of this chapter, the rules adopted pursuant to this chapter and the terms, conditions or provisions of the licensee's license and the provisions of the administrative hold. Except as specifically restricted by the department pursuant to a notice under subsection 1, the licensee may, for the duration of the hold and as applicable to the licensee's license type, cultivate, manufacture, test or sell any marijuana, marijuana products or marijuana plants not subject to the administrative hold.

4. Termination; duration. The department may terminate an administrative hold at any time following the imposition of the hold, except that an administrative hold under this section may not be imposed for a period exceeding 30 consecutive days from the date notice is provided to the licensee in accordance with subsection 1. Notice of termination of an administrative hold must be provided by the department to the licensee subject to the hold.

5. Department action; administrative hold not required prior to imposition of penalty. Subsequent to the termination of an administrative hold under subsection 4, the department, in accordance with the applicable provisions of this subchapter and the rules adopted pursuant to this subchapter, may impose a monetary penalty on the licensee that was subject to the hold or suspend or revoke the licensee's license for a violation of the provisions of this chapter, the rules adopted pursuant to this chapter or the terms, conditions or provisions of the licensee's license.

The department is not required to impose an administrative hold on a licensee prior to imposing a monetary penalty on a licensee or suspending or revoking the licensee's license in accordance with the applicable provisions of this subchapter and the rules adopted pursuant to this subchapter for a violation of the provisions of this chapter, the rules adopted pursuant to this chapter or the terms, conditions or provisions of the licensee's license

Sec. 7. 28-B MRSA §804 is amended to read:

§804. Rules

The department shall adopt rules governing the imposition of administrative holds, monetary penalties, suspensions and revocations under this subchapter, which must include, but are not limited to, provisions relating to notice and conduct of hearings consistent with the Maine Administrative Procedure Act and provisions relating to the disposition of unauthorized marijuana and marijuana products of a licensee.

Sec. 8. Department of Administrative and Financial Services, Office of Marijuana Policy; approval of final adoption. Final adoption of Chapter 1: Adult Use Marijuana, a provisionally adopted major substantive rule of the Department of Administrative and Financial Services, office of marijuana policy, that was submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period on June 5, 2019 is authorized only if the following changes are made:

1. The rule must be amended in the section labeled “General” to:
 - A. Delete the second, third, fourth and fifth paragraphs of that section regarding the availability and location of copies of the Code of Federal Regulations, the Maine Revised Statutes and the Code of Maine Rules; and
 - B. Clarify in the first paragraph of that section that the rule establishes the requirements for licensure as a marijuana establishment, including the fees, application and licensing processes and requirements for the cultivation, manufacture, testing and sale of adult use marijuana and adult use marijuana products; that the activities described in the rule may be considered a violation of federal law; that persons cultivating, manufacturing, testing, selling, purchasing or otherwise receiving adult use marijuana or adult use marijuana products may be subject to federal sanctions for what may otherwise be considered authorized conduct in the State and compliance with the rule does not exempt licensees, their employees or customers from possible federal prosecution; and that the department is not responsible or liable for the actions of licensed marijuana establishments under the rule;
2. The rule must be amended in section 1.1 to clarify that the Department of Administrative and Financial Services, acting through its Office of Marijuana Policy, has developed the following rule in accordance with the statutory authority provided in Title 28-B, section 104, for the purpose of implementing, administering and enforcing the provisions of Title 28-B, chapter 1;
3. The rule must be amended, as necessary, in sections 1.3(1), 2.4.7, 2.4.9(B)(2), 12.1.3, 12.2.2(B)(1), 12.2.3(B)(15) and any other relevant sections to substitute for the broad reference to the Maine Revised Statutes a reference to Title 28-B specifically;
4. The rule must be amended in section 1.3(4) to delete the definition for “age restricted retail area.” The rule must be amended, as necessary, in sections 2.2.1(C)(6), 2.4.7(A), 3.2, 3.3.4(A), 3.4.1(C)(5), 3.6.4(E), 3.9.4(A) and any other relevant sections to incorporate that deletion and to otherwise provide that, consistent with Title 28-B, section 507, the entry of persons under 21 years of age into the licensed premises of a marijuana establishment is prohibited;
5. The rule must be amended in sections 1.3(5), 1.3(14) and 1.3(58) to delete definitions for “analytical batch,” “commissioner” and “nursery plant canopy”;
6. The rule must be amended in sections 1.3(16), 1.3(33), 2.3.1(D)(1), 12.1.3 and any other relevant sections to delete reference to the term “the rules adopted pursuant to this chapter.” The rule must be amended as necessary and where appropriate to substitute for the term “this chapter” the term “this rule”;
7. The rule must be amended in section 1.3(29) to define the term “inherently hazardous substance,” consistent with the statutory definition in Title 28-B, section 102, subsection 20, rather than the term “inherently hazardous materials.” The rule must be amended in sections

2.4.9(D), 2.6.5(A)(1) and any other relevant sections to incorporate that amended definition;

8. The rule must be amended, as necessary, in sections 1.3(35), 2.7.1, 3.2.3 and any other relevant sections to clarify that, consistent with Title 28-B, section 510, entry into limited access areas is authorized only for persons displaying an individual identification card and for contractors of a licensee and is not authorized for any other persons;

9. The rule must be amended in sections 1.3(37), 2.6.5(A)(3)(a), 3.5.1(C)(3), 12.2.2(B)(1) and any other relevant sections to reference the Maine Land Use Planning Commission;

10. The rule must be amended, as appropriate, in sections 1.3(40), 3.8.2(A)(1), 3.8.2(B), 3.8.5(C)(2) and any other relevant sections to substitute for the term “cannabis” the term “marijuana”;

11. The rule must be amended in sections 1.3(47) and 1.3(83) to delete definitions for “marijuana items” and “usable marijuana.” The rule must be amended, as necessary, in sections 1.3(28), 1.3(65), 3.4.1(E), 3.6.2(D), 3.6.6(E), 3.9.3, 3.9.5, 4.2.2, 4.2.4(B), 5.1(A), 5.2, 8.1, 11.1.1, 11.1.2, 12.2.3(B)(6), 12.5(D), 12.7(B) and any other relevant sections to substitute for those deleted terms the terms “marijuana,” “marijuana concentrate” and “marijuana products” as appropriate and in a manner consistent with the definitions of those terms in sections 1.3(41), 1.3(42) and 1.3(49);

12. The rule must be amended in section 1.3(51) to define “marijuana trim,” consistent with the statutory definition in Title 28-B, section 102, subsection 35, to mean any part of a marijuana plant, whether processed or unprocessed, that is not marijuana flower or a marijuana seed;

13. The rule must be amended in section 1.3(55) to delete the definition for “minor” and the rule must be amended, as necessary, in sections 3.8.2(A), 3.9.3(E), 5.2(A)(1), 5.2(B)(5), 12.2.2(B)(7), 12.2.3(B)(8) and any other relevant sections to substitute the terms “person under 21” or “persons under 21” as appropriate;

14. The rule must be amended in sections 1.3(60), 1.3(61) and 1.3(80) to delete definitions for “other interested parties,” “party of control” and “true party of interest.” The rule must be amended, as necessary and appropriate, in sections 2.4.2, 2.4.3, 2.5.1, 2.6.5(7), 2.7.2(B), 2.8.3(B), 2.10, 3.1, 12.1.2(D), 12.3.2(A), 12.3.4(A), 12.3.5(C)(3) and any other relevant sections to substitute for those deleted terms the statutory terminology in Title 28-B, subchapter 2 regarding the characterization of ownership interests, to incorporate the statutory application of the general licensing criteria in Title 28-B, section 202 to the ownership interests in a license, to incorporate the statutory requirements in Title 28-B, section 202 regarding the disclosure of direct and indirect financial interests in a license and to otherwise amend the rule consistent with the characterization of ownership interests in a license in Title 28-B, subchapter 2 and the application of the provisions of Title 28-B, subchapter 2 to those ownership interests;

15. The rule must be amended in section 1.3(63) to define “plant canopy,” consistent with the statutory definition in Title 28-B, section 102, subsection 41, to mean the total surface area within the licensed premises of a cultivation facility that is authorized by the department for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of noncontiguous areas, each component area must be separated by identifiable boundaries. If a tiered or shelving system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed premises of a cultivation facility that are used by the licensee to cultivate immature marijuana plants and seedlings and that are not used by the licensee at any time to cultivate mature marijuana plants;

16. The rule must be amended in section 1.3(64) to define “premises” to mean the designated area within a structure or structures and land specified in a license application that is owned, leased or otherwise held under the control of the applicant or licensee where conduct related to the cultivation, manufacture, testing or sale of adult use marijuana and adult use marijuana products occurs. The premises must be a contiguous area and may only be occupied by one marijuana establishment unless otherwise permitted by statute or this rule, except that nothing in this definition may be construed to prohibit the siting of multiple marijuana establishments in the same building or property as long as each marijuana establishment operates in a physically distinct space from any other marijuana establishment;

17. The rule must be amended in 1.3(65) to delete the definition for “process” and the rule must be amended, as necessary, in sections 1.3(35), 1.3(63) , 2.4.8(B), 2.7.1(A)(1), 2.7.1(C), 3.3.1, 3.3.4, 10, 11.3.2(A)(1), 12.6.1(C), 12.7(A)(5) and any other relevant sections to substitute the term “cultivation” as appropriate for the term “process”;

18. The rule must be amended in section 1.3(69) to define “provisional license” to mean a license issued by the department pursuant to Title 28-B, section 503, subsection 2, paragraph B, subparagraph (2) that authorizes testing of marijuana and marijuana products by a testing facility that has met all requirements for an active license under this rule and that has applied for but not yet obtained certification, registration or accreditation from an approved organization/ The rule must be amended, as necessary, in any other relevant sections to ensure correct use of that defined term;

19. The rule must be amended in section 1.3(70)(a) to substitute for the term “This paragraph is repealed effective June 1, 2021” the term “This requirement does not apply after May 31, 2021”;

20. The rule must be amended in section 1.3 to:

A. Define “certificate of analysis” consistent with the use of that term in sections 3.8.2(F), 3.9.3(Q) and 11;

B. Define “qualifying patient,” consistent with the statutory definition in Title 28-B, section 102, subsection 45, to mean a person who possesses a valid certification for the medical use of marijuana pursuant to Title 22, section 2423-B. The rule must be amended, as necessary, in any relevant sections to ensure the correct use of that defined term;

C. Define “registered dispensary,” consistent with the statutory definition in Title 28-B, section 102, subsection 46, as having the same meaning as in Title 22, section 2422, subsection 6. The rule must be amended, as necessary, in sections 2.4.4(D), 2.4.8, 2.4.9 and any other relevant sections to ensure the correct use of that defined term;

D. Define “registered caregiver,” consistent with the statutory definition in Title 28-B, section 102, subsection 47, as having the same meaning as in Title 22, section 2422, subsection 11. The rule must be amended, as necessary, in sections 2.4.4(D), 2.4.8, 2.4.9 and any other relevant sections to ensure the correct use of that defined term;

E. Define “sample,” consistent with the statutory definition in Title 28-B, section 102, subsection 50, to mean:

(1) An amount of marijuana or an amount of a marijuana product provided to a testing facility by a marijuana establishment or other person for testing or research and development purposes in accordance with Title 28-B, subchapter 6;

(2) An amount of adult use marijuana or an amount of an adult use marijuana product collected from a licensee by the department for the purposes of testing the marijuana or marijuana product for product quality control purposes pursuant to Title 28-B, section 512, subsection 2;

(3) An amount of adult use marijuana provided by a cultivation facility to another licensee for business or marketing purposes pursuant to Title 28-B, section 501, subsection 8; or

(4) An amount of adult use marijuana or an amount of an adult use marijuana product provided to another licensee by a products manufacturing facility for business or marketing purposes pursuant to Title 28-B, section 502, subsection 6.

The rule must be amended, as necessary, in any relevant sections to ensure the correct use of that defined term;

21. The rule must be amended in sections 2.1.1, 2.2, 2.4, 3.3.1, 3.9.5, 4.1, 13 and any other relevant sections to describe “types” of licenses rather than “classes” of licenses;

22. The rule must be amended to delete section 2.1.2 and to amend, as necessary and appropriate, any other sections affected by that deletion;

23. The rule must be amended, as necessary, in sections 2.2.1(C)(7) and 3.9.1(A)(1)(b) to clarify that a nursery cultivation facility, consistent with Title 28-B, section 501, subsection 3, paragraph D, may sell to consumers only immature marijuana plants, seedlings, marijuana seeds and agricultural or gardening supplies relating to the cultivation of marijuana;

24. The rule must be amended, as necessary, in section 2.2.3 and any other relevant sections to clarify that the addition of marijuana to food is not considered impermissible adulteration in accordance with Title 22, section 2158;

25. The rule must be amended, as necessary, in sections 2.2.4, 3.9 and any other relevant sections to incorporate all statutory prohibitions regarding the items authorized for sale by marijuana stores and the prohibitions applicable to sales by marijuana stores consistent with Title 28-B, section 504, subsections 1 and 2;

26. The rule must be amended, as necessary, in section 2.3.1(E) and any other relevant sections to substitute for the term “felony” the term “a crime punishable by imprisonment for one year or more” and to substitute for the term “misdemeanor” the term “a crime punishable by imprisonment for less than one year”;

27. The rule must be amended in section 2.3.1(E)(2) and any other relevant sections to clarify that the applicant shall submit and the department shall consider all applicants’ criminal convictions in this State or in another jurisdiction for offenses involving dishonesty, deception, misappropriation or fraud only, but that, consistent with Title 28-B, section 203, subsection 1, any such convictions shall not be automatically disqualifying for the purposes of licensure;

28. The rule must be amended, as necessary, in section 2.3.1(E)(7) and (8) and any other relevant sections to clarify that the applicant shall submit and the department shall consider all applicants’ tax compliance history, but that, consistent with Title 28-B, section 203, subsection 2, any tax delinquency shall not be automatically disqualifying for the purposes of licensure;

29. The rule must be amended in section 2.3.1 to incorporate the statutory requirement in Title 28-B, section 203, subsection 3 that the applicant submit and the department shall consider information regarding any violations or penalties imposed on the applicant in another jurisdiction regarding the regulated cultivation, manufacture, testing or sale of marijuana or marijuana products, but that any such violations or penalties shall not be automatically disqualifying for the purposes of licensure;

30. The rule must be amended, as necessary, in section 2.4.1(B) and any other relevant sections to clarify that a conditional license issued by the department may be used by the applicant to which the license was issued to demonstrate that the applicant has met all applicable requirements for conditional licensure in accordance with Title 28-B, section 205, subsection 3 for the purpose of seeking local authorization;

31. The rule must be amended, as necessary, in section 2.4.3(A)(8) and any other relevant sections to remove authorization for the department to disseminate or disclose criminal history record information obtained through a criminal history record check if requested as part

of a law enforcement investigation. The rule must be amended, as necessary, in section 2.4.3 to ensure consistency between the provisions of section 2.4.3 and the provisions of Title 28-B, section 204;

32. The rule must be amended in sections 2.4.4(B) and 12.1.2(F) to substitute for the terms “Maine Electrical Code” and “Maine’s Electrical Code” the term “applicable electrical code”;

33. The rule must be amended in sections 2.4.4(D), 2.4.8, 2.4.9, 3.4.1(D), 3.6.7, 3.8.6, 12.2.2(B)(3), 12.3.5(C) and any other relevant sections to substitute the terms “marijuana for medical use,” “marijuana products for medical use,” “marijuana concentrate for medical use,” “marijuana plants for medical use,” “marijuana cultivation for medical use” and other similar terminology as appropriate and as consistent with the use of such terminology in Title 22, chapter 558-C and in Title 28-B for any incorrect terminology in those sections;

34. The rule must be amended, as necessary, in sections 2.4.8, 2.4.9, 3.9 and any other relevant sections to incorporate the statutory prohibition in Title 28-B, section 504, subsection 5 on the use of a shared facility for the sale of adult use marijuana and adult use marijuana products and the sale of marijuana and marijuana products for medical use;

35. The rule must be amended in section 2.4.9(A) to substitute for the term “registered medical marijuana manufacturing facility” the term “manufacturing facility registered in accordance with Title 22, section 2423-F”;

36. The rule must be amended in section 2.5.1 to clarify that the department will verify that each marijuana establishment, excluding testing facilities, satisfies the residency requirements of Title 28-B, section 202, subsection 2 and the rule. The rule must be amended in section 2.5.1(C) to clarify that the department may refuse to issue a conditional license to an applicant at its discretion until it is satisfied that the applicant has satisfied the residency requirements of Title 28-B, section 202, subsection 2 and the rule.

37. The rule must be amended, as necessary, in section 2.5.5 and any other relevant sections to clarify that any denial of an application for a conditional license must be for good cause consistent with Title 28-B, section 206;

38. The rule must be amended in section 2.6.2(B) to clarify that upon receipt of a local authorization certification form, the department shall, within 10 calendar days, notify the applicant of any additional information needed for the issuance of an active license or, if applicable, a provisional license.

39. The rule must be amended in section 2.7.2(D) to substitute for the term “medical marijuana credential revocation” the term “revocation of a registry identification card or registration certificate issued pursuant to Title 22, chapter 558-C”;

40. The rule must be amended in section 2.8.1(B) and any other relevant sections to remove authority for the department to authorize inspections by a third party;

41. The rule must be amended, as necessary, in sections 2.8.1(E), 2.8.2 and any other relevant sections to clarify the application of and the requirements for an increase in cultivation tier upon approval consistent with Title 28-B, section 303 and the application of and the requirements for an increase in maximum licensed plant canopy upon renewal of a tier 4 cultivation facility license consistent with Title 28-B, section 304, including, but not limited to, clarification that the increase under Title 28-B, section 304 is only available with respect to a tier 4 cultivation facility license and is only available to a licensee every 2 years;

42. The rule must be amended, as necessary, in section 2.10 to refer to a transfer of ownership interests instead of a transfer of license, consistent with Title 28-B, section 210;

43. The rule must be amended, as necessary, in section 2 and any other relevant sections to incorporate:

A. A process for revocation or refusal to renew an inactive license, consistent with Title 28-B, section 214;

B. The statutory prohibitions in Title 28-B, section 205, subsection 2, paragraphs A, B and C regarding the limitation on the number of cultivation facility licenses or total authorized plant canopy in common ownership, the limitation on the common ownership of a testing facility license and any other license type or common ownership with a registered caregiver or registered dispensary and the limitation until January 1, 2022 on the number of marijuana store licenses in common ownership;

C. A process for the termination of a license, consistent with Title 28-B, section 212;

44. The rule must be amended in sections 3.6.3(B)(3) and (4) to substitute for the term “marijuana plant start” the term “seedling”;

45. The rule must be amended, as necessary, in sections 3.8.1(G), 5.2(B)(9), 11, 12.5 and any other relevant sections to remove the term “third-party” in reference to testing facilities or laboratories and to substitute, as appropriate, for the terms “laboratory” or “laboratories” the terms “testing facility” or “testing facilities”;

46. The rule must be amended, as necessary, in section 3.8.2(A)(2) and any other relevant sections to incorporate the statutory prohibition in Title 28-B, section 703, subsection 1, paragraph E on the sale of edible marijuana products in the distinct shape of a human, animal or fruit and ensure consistency with Title 28-B, section 703, subsection 1, paragraph E;

47. The rule must be amended, as necessary, in section 3.9.7(B) and any other relevant sections to clarify that reusable exit packaging that is not tamper-evident may be used or sold by a licensee only if marijuana or marijuana products sold to a consumer that are placed in such reusable exit packaging are prepackaged in tamper-evident packaging and that such sale otherwise meets applicable packaging requirements of Title 28-B, section 701, subsection 2. The rule must be amended, as necessary, in sections 11.3, 11.4, 11.5 and any other relevant sections to ensure consistency with the requirements in Title 28-B, section 701, subsection 2 regarding

tamper-evident, child-resistant and opaque packaging;

48. The rule must be amended in section 4.1(B)(11) and any other relevant sections to require a licensee to record in the tracking system data regarding, where applicable, the municipality or municipalities where the marijuana or marijuana product was cultivated, harvested, manufactured, tested, sold to other licensees, sold to consumers and disposed of or destroyed;

49. The rule must be amended, as necessary, in section 5 and any other relevant sections consistent with the statutory prohibition in Title 28-B, section 702, subsection 1, paragraph B on advertising or marketing that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal particularly to persons under 21 years of age and to incorporate the statutory prohibition in Title 28-B, section 702, subsection 1, paragraph C on the use of advertising by a marijuana establishment within 1,000 feet from a school;

50. The rule must be amended, as necessary, in section 6.1.1 and any other relevant sections to clarify that trade samples may not be sold or otherwise provided or conveyed for payment or consideration;

51. The rule must be amended in section 9 to delete the second sentence of the first paragraph and to delete section 9.1(A)(2). The rule must be amended in section 9.1(A)(1) to provide that licensees must notify the Department of Public Safety of a discharge but are not required to notify the Department of Environmental Protection of such discharge. The rule must be amended in section 9.1(B)(1) to provide that the licensee must contact the National Response Center. The rule must be amended in section 9.2(A) to provide that a marijuana plant, marijuana trim, other marijuana and other plant material may be classified as hazardous waste if it is toxic, flammable or a listed waste subject to regulation under Department of Environmental Protection Rule Chapter 850;

52. The rule must be amended in the second sentence of section 11 to delete the term “if such facility is in operation.” The rule must be amended in the third sentence of section 11 to clarify, consistent with Title 28-B, section 602, subsection 1, the department’s authority to temporarily waive mandatory testing requirements;

53. The rule must be amended, as necessary, in section 11.1.3(F) and any other relevant sections consistent with the statutory prohibition in Title 28-B, section 701, subsection 4, paragraph B on labeling or packaging of marijuana or marijuana products in a manner that is specifically designed to appeal particularly to a person under 21 years of age. The rule must be amended, as necessary, in section 11.1 to incorporate the statutory requirements in Title 28-B, section 701, subsection 1, paragraph A, B and C that all marijuana and marijuana product labels include the license numbers of the cultivation facility and products manufacturing facility if applicable involved with the cultivation and manufacture of the marijuana or marijuana product, an identity statement and health and safety warning labels. The rule must be amended, as necessary, in section 11.1 to incorporate the statutory prohibition in Title 28-B, section 701, subsection 4, paragraph D on labeling or packaging that depicts a human, animal or fruit;

54. The rule must be amended in section 11.2(C) to provide that any statement as to cannabinoid profile or the presence or absence of contaminants shall require testing and label verification by a licensed testing facility;

55. The rule must be amended, as necessary, in section 13.6 and any other relevant sections to incorporate, consistent with Title 28-B, section 207, subsection 1, paragraph D, the increased annual license fee for a tier 4 cultivation facility license that has increased its maximum amount of plant canopy pursuant to Title 28-B, section 304;

56. All necessary grammatical, formatting, punctuation or other technical nonsubstantive editing changes must be made to the rule, including, but not limited to, any necessary correction of the description of the units of the rule to ensure proper reference and application of the provisions of the rule; and

57. All other necessary changes must be made to the rule to ensure conformity and consistency throughout the rule and to ensure consistency between the rule and the provisions of this Act and between the rule and the provisions of Title 28-B.

The Department of Administrative and Financial Services, office of marijuana policy is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

SUMMARY

This amendment, which is the majority report of the committee, changes the title and replaces the bill. The amendment:

1. Amends the Maine Food Law to provide that goods that are prepared in a licensed food establishment that is also a licensed adult use marijuana products manufacturing facility and that contain marijuana for adult use pursuant to the Maine Revised Statutes, Title 28-B, are not considered adulterated under the Maine Food Law;

2. Authorizes the Department of Administrative and Financial Services, referred to in this summary as “the department,” under the Marijuana Legalization Act, referred to in this summary as “the Act,” to require a conditionally licensed applicant seeking active licensure under the Act to submit information necessary for the department to determine that the applicant continues to meet all applicable requirements for conditional licensure and authorizes the department to refuse to issue an active licensee if the applicant no longer meets the requirements for conditional licensure;

3. Clarifies the routine technical rulemaking authority of the department under the Act with respect to the adoption of rules regarding the provisional licensure, licensure, certification and accreditation of testing facilities;

4. Amends the Act to authorize entry into limited access areas within a marijuana establishment by contractors of a licensee who do not have an individual identification card as long as certain criteria are met;

5. Amends the Act to authorize the department to determine by rule that for a particular type of edible marijuana product, the stamping or embossing of a universal symbol on each serving of the product is impracticable and is not required;

6. Amends the Act to authorize the department to impose an administrative hold on a licensee, which may involve imposition of certain operational restrictions on the licensee's license if, as a result of an inspection or investigation, the department determines there are reasonable grounds to believe the licensee has committed or is committing a violation of the Act, the rule adopted pursuant to the Act or the conditions or provisions of the licensee's license. An administrative hold may not be imposed for a period exceeding 30 consecutive days; and

7. Authorizes, subject to the incorporation of specified amendments, final adoption of Chapter 1: Adult Use Marijuana, a major substantive rule of the Department of Administrative and Financial Services, office of marijuana policy, that was submitted to the Legislature for review on June 5, 2019.



Approved: 06/17/19 *MRC*

129th MAINE LEGISLATURE

LD 719

LR 2197(02)

An Act To Amend the Adult Use Marijuana Law

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Veterans and Legal Affairs

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Office of Marijuana Policy within the Department of Administrative and Financial Services as a result of changes to the laws regarding marijuana to incorporate recently passed legislation and as a result of the final adoption of rules regarding adult use marijuana are anticipated to be minor and can be absorbed within existing budgeted resources.

No appropriations/allocations section required.